Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Comprehensive Review of Universal Service Fund Management, Administration, and Oversight	WC Docket No. 05-195

BELLSOUTH COMMENTS

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BellSouth Corporation, on behalf of itself and its wholly owned subsidiaries ("BellSouth"), hereby submits its comments on the *Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking* ("*NPRM*") released on June 14, 2005 in the above-captioned proceeding.[1]

I. INTRODUCTION AND SUMMARY

BellSouth appreciates the opportunity to provide input and offer suggestions to improve the management and administration of the federal universal service program. Although the underlying purpose behind universal service – to ensure that <u>all</u> Americans have access to affordable telecommunications services – is straightforward, the implementation and administration of this multi-billion dollar program are complex and involve thousands of stakeholders (contributors, recipients, vendors, applicants, the Commission, state commissions, etc.). Last year alone, the Universal Service Administrative Company ("USAC") disbursed over

[1] *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight*, *et al.*, WC Docket No. 05-195, *et al.*, *Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking*, FCC 05-124 (rel. June 14, 2005).

$5 billion to qualified applicants through the four universal service programs (high-cost; schools and libraries;[2] low-income; and rural health care).[3] On an annual basis, more than 2,600 service providers collect and remit funds to USAC for disbursement;[4] and USAC processes nearly 90,000 invoices and makes approximately 25,000 payments each year.[5] As these figures demonstrate, the federal universal service mechanism is a massive program that requires significant resources. Accordingly, the Commission, in its oversight role, is obligated to ensure that critical universal service funds are used for their intended purpose – ensuring access to affordable telecommunications services to all Americans – and not diverted due to inefficiencies, misuse, fraud, or waste. This comprehensive rulemaking proceeding is an appropriate step in the right direction.

BellSouth offers a number of recommendations to improve the administration and management of the federal universal service program. Some of BellSouth's proposals are general in nature and can be applied globally (*e.g.,* more targeted outreach programs). Other recommendations are program-specific and are intended to streamline various administrative processes. BellSouth believes that the recommendations set forth herein appropriately balance the needs of the various stakeholders – the Commission's need to ensure that the federal universal service program meets the objectives of the Telecommunications Act of 1996; USAC's need for accurate and reliable data in order to manage and administer the four federal universal

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[2] The schools and libraries program is sometimes referred to herein as the "E-rate program."

[3] *Trends in Telephone Service*, Industry Analysis and Technology Division, Wireline Competition Bureau, at 19-5 (Table 19.1) (Tables Compiled as of April 2005); *see also* Universal Service Administrative Company 2004 Annual Report at 12 ("USAC 2004 Annual Report"), at http://www.universalservice.org/Reports/.

[4] USAC 2004 Annual Report at 13.

[5] *Id.* at 12-13.

service mechanisms; the recipients' need to receive adequate support in a timely manner; and the contributors' need to understand the rules and procedures for collecting and remitting funds to USAC in a way that is not unduly burdensome.

II. USAC SHOULD ENGAGE IN MORE EFFECTIVE COMMUNICATION AND OUTREACH WITH STAKEHOLDERS.

The Commission should require USAC to engage in more effective communication with stakeholders, including service providers as both contributors and recipients. The Commission and USAC have historically devoted significant time and resources to educate schools, libraries, vendors, and service providers about the schools and libraries program. In fact, in 2004, USAC trained more than 400 service providers in the rules governing the schools and libraries program.[6] The extensive outreach efforts under this program have served as a model for the low-income mechanism. The Commission together with the National Association of Regulatory Commissioners ("NARUC") recently launched "Lifeline Across America," a nationwide program designed to increase the subscribership of federal and state Lifeline and Link-Up programs.[7] This initiative includes a Best Practices Working Group (comprised of representatives from the Commission, NARUC, state and local governments, the industry, tribal lands, and consumer groups) that is charged with developing guidelines to help carriers target consumers eligible for participation in the low-income programs. The initiative also involves website enhancements and a Train-the-Trainer Program.

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[6] *Id.* at 13.

[7] FCC and NARUC Launch "Lifeline Across America" To Raise Awareness of Lifeline and Link Up Programs (rel. July 26, 2005).

BellSouth recommends that the Commission and USAC devote similar resources and develop similar outreach programs for the other universal service programs. This suggestion is consistent with USAC's stated intention "to ensure that its stakeholders understand the programs, the manner in which they work, and the way in which they interrelate."[8] According to USAC's 2004 Annual Report, the USAC Board authorized the staff to create an education and communications plan to keep participants informed about the various programs and processes.[9] BellSouth urges USAC to continue to develop additional workshops and tutorials to facilitate information sharing about the various programs in existence. Educating stakeholders about the rules and processes for filing applications, submitting contributions, and obtaining universal service support leads to fewer questions, less confusion, and greater efficiencies.

BellSouth also recommends that USAC periodically establish focus groups comprised of stakeholders. These focus groups could assess the efficacy of current USAC processes and test proposed procedures in advance of their implementation. Stakeholders are a valuable resource that can and should be utilized by USAC in developing reasonable and practical administrative procedures.

The creation of a focus group as described above would likely have minimized the problems recently experienced when the Commission adopted a revised FCC Form 497, which is completed by service providers seeking federal low-income support.[10] In September 2004, the

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[8] USAC 2004 Annual Report at 4.

[9] *Id.*

[10] The Commission's request for comment on whether the current Form 497 should be modified, and if so, how (*NPRM*, ¶ 62), is not only appropriate but also required by law. The Administrative Procedure Act requires that the Commission promulgate new rules or changes to existing rules only after proper notice and comment. *See* 5 U.S.C. § 553(b), (c). Also, because revisions to the Form 497 would change the information collection requirements for the low-
Footnote Continued

Commission announced that it had revised FCC Form 497 and established an effective date of October 15, 2004.[11] The revised Form 497 requested data that was not previously required. Most carriers, including BellSouth, were (and still are) unable to provide the requested data because their billing systems are not programmed to capture such data. Industry members explained the challenges to the Commission and USAC. As a result, the Commission delayed the effective date of the revised Form 497 until further notice.[12] BellSouth and others continue to work with the Commission and USAC to develop a form that will capture necessary information that is readily available to service providers.

In addition to the creation of focus groups, another way for USAC to improve communication with and be more responsive to stakeholders is by establishing a reasonable change management process for adopting new or modifying existing USAC procedures and policies. This process should provide contributors and recipients reasonable notification of potential changes in USAC procedures, allow stakeholders to provide relevant input in advance of such changes, and allow stakeholders to submit reasonable requests for changes. Any change

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income program, the Commission must conduct the appropriate analysis under the Paperwork Reduction Act of 1995, 44 U.S.C. § 3507. Note that the Wireline Competition Bureau appropriately sought public comment on proposed revisions to various FCC forms used in the schools and libraries program prior to adopting any changes. *See Wireline Competition Bureau Seeks Comment on Proposed Revisions to FCC Forms 472, 473, and 474*, CC Docket No. 02-6, *Public Notice*, DA 05-513 (rel. Mar. 1, 2005).

[11] *Wireline Competition Bureau Announces Effective Date of Revised Form 497 Used to File Low Income Claims with USAC*, WC Docket No. 03-109, *Public Notice*, DA 04-3016 (rel. Sept. 21, 2004).

[12] *Wireline Competition Bureau Announces Delay of Effective Date For Revised Form 497 Used for Low-Income Universal Service Report Until Further Notice*, WC Docket No. 03-109, *Public Notice*, DA 05-604 (rel. Mar. 4, 2005); *see also Wireline Competition Bureau Announces Delayed Effective Date For Revised Form 497 Used for Low-Income Universal Service Report,* WC Docket No. 03-109, *Public Notice,* DA 04-3188 (rel. Oct. 4, 2004).

management process adopted by USAC also should be well documented and readily accessible by all stakeholders.

BellSouth further recommends that USAC hire staff with appropriate backgrounds in business or operational systems and management. The staff should include individuals with appropriate experience in operations, financial management, project management, and systems efficiency. Having such expertise will enable USAC to better understand the effects of proposed administrative changes upon service providers.

Finally, BellSouth recommends that USAC post on its website a list of appropriate contacts for each of the four programs. BellSouth often has had difficulty identifying the appropriate USAC staff member with expertise and knowledge to resolve discrepancies and answer questions when they arise. To minimize this problem, USAC should maintain a complete and updated contact list on its website.

III. THE COMMISSION SHOULD CONTINUE TO SIMPLIFY THE E-RATE PROGRAM, ENSURE THE EQUITABLE DISTRIBUTION OF E-RATE FUNDS, AND PREVENT WASTE, FRAUD, AND ABUSE WITHIN THE PROGRAM.

The Commission's overarching goals with the E-rate program should continue to be: (1) the simplification of E-rate program administration; (2) ensuring the equitable distribution (and recovery) of program funds; and (3) the prevention of waste, fraud and abuse within the program. In these comments, BellSouth will address topics within two of these rubrics – program administration and waste, fraud, and abuse prevention – while reserving comments on other areas for its replies.

The *NPRM* seeks discussion on current E-rate program Forms 470, 471, 472, 473, 474, 486 and 498.[13] The *NPRM* specifically asks whether any of these forms could be consolidated or eliminated. While BellSouth endorses the use of streamlined forms, at the present time, and as a general matter, BellSouth does not believe that drastic consolidation or total elimination of existing forms is necessary in order to achieve meaningful simplification of current program administration.[14] For example, Form 470, which is completed by schools and libraries to request discounted services, contains information necessary to commence the competitive bidding process. As long as the competitive bidding process remains a keystone of the program, elimination of this form without an adequate alternative would appear to neither improve the program nor safeguard the fund.

In addition, Forms 472, 473 and 474 should not be combined absent a compelling evidentiary record for making a change. Participants in the schools and libraries program have, over the years, developed processes and procedures around the existing forms, and unwarranted combinations or consolidations could provide more disruption than any superficial simplification. For instance, BellSouth, as a service provider, has hard-coded existing Form 474 information into its billing systems. Form elimination, combination, or consolidation could

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[13] *NPRM*, ¶ 41.

[14] This is not to say that the forms would not benefit from streamlining. The Wireline Competition Bureau ("Bureau") has, as the *NPRM* notes, proposed certain revisions to Forms 472, 473 and 474. *NPRM*, ¶ 41 & n.95. Many of these proposed revisions are an excellent first step toward further program simplification and administrative efficiency. BellSouth has filed comments and reply comments in response to the Bureau's request for comments on these proposed revisions. *See Schools and Libraries Universal Service Support Mechanism Proposed Revisions to FCC Forms 472, 473 and 474*, CC Docket No. 02-06, BellSouth Comments (Mar. 22, 2005) and BellSouth Reply Comments (Apr. 5, 2005). BellSouth urges the Bureau to modify its proposed revisions in the manner advocated by BellSouth in its comments and reply comments.

result in unwarranted and significant re-programming costs and work efforts, with resultant delays and increased costs in service delivery. Any proposals to eliminate or consolidate forms should be justified by the demonstrated likelihood of achieved efficiencies.

The Commission provides no factual basis for a number of potential revisions related to these forms: revising the certification on Form 473 pertinent to applicants paying on an installment plan, ensuring the independent execution of certifications by applicants and service providers contained in Form 472, and whether to add a signature block to Form 474.[15] BellSouth has had no experience to indicate that, at the present time, such revisions are necessary to improve the program or safeguard the fund. Accordingly, BellSouth urges the Commission to delegate these questions to the Wireline Competition Bureau ("Bureau") for its consideration. To the extent that the Bureau believes that revisions along these lines may be in order, it should allow public notice and comment on any proposed revisions.

BellSouth believes that program efficiencies will be gained if applicants, to the extent so permitted under local law, are allowed to initiate a multi-year contract bidding process.[16] Better synchronization between the schools and libraries application and disbursement process and the planning and budget cycles of program applicants should result in less cost and fewer program inefficiencies. Limiting program applicants to one-year application cycles, when local law generally permits longer application cycles, may not be the most efficient way to protect the fund, and applicants and service provider costs should not be increased because of inconsistencies between state and federal rules. To the extent the Commission believes that

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[15] *Id.*

[16] *Id.*, ¶ 42.

multi-year application cycles could jeopardize equitable distribution and recovery of program funds, the Commission could consider giving priority to applicants that are not currently in the midst of a multi-year contract term and that have not just completed a contract in the most recent annual contract cycle.

Existing program certifications, contractual protections, the nature of the products and services eligible under the program, and the competitive bidding process are sufficient to safeguard applicants from sub-standard service provider conduct. The same cannot be said for consultants, however, and the Commission should establish procedures to assure quality and conduct standards to deter waste, fraud, and abuse by E-rate consultants. At a minimum, there should be a corollary to the Service Provider Identification Number – a Consultant Identification Number ("CIN") – and the applicant should be required to provide the CIN on all forms. E-rate consultants, in order to obtain a CIN, should be required to certify to the same extent that service providers are required to certify with respect to their knowledge of, and compliance with, all laws and rules applicable to the E-rate program. Additionally, consultant signatures and appropriate certifications should be provided on all forms on which the CIN is required.

The current *NPRM* seeks comment on whether the Commission should institute a targeted independent audit requirement for some recipients of E-rate funding,[17] as well as contributor audits.[18] As an initial matter, BellSouth, as a service provider, should be notified of, and allowed to voluntarily participate in, any E-rate beneficiary audit of BellSouth's E-rate customers. Service provider participation could help speed resolution of beneficiary audits and

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[17] *NPRM*, ¶¶ 71-79.

[18] *Id.*, ¶¶ 80-82. BellSouth addresses contributor audits at *infra* pp. 20-21.

help service providers prepare for and minimize any adverse business impacts of any non-compliance determination that may arise in connection with the audit.[19]

In addition, BellSouth does not believe that the Commission need initiate any targeted audit requirement of service providers, as the current E-rate audit structure for providers is effective and appropriate. Service providers have sufficient incentives under existing laws, to self-audit their compliance with the E-rate and any other federal regulatory program. As the Commission notes, many participants in the universal service program have internal auditors on staff. Allowing internal auditors and other staff to perform compliance reviews or audits both satisfies the need for oversight and obviates the need to adopt any additional audit requirements with respect to service providers, including annual independent audits. To the extent the Commission meant to seek comment on the adoption of additional audit requirements directed toward service providers, as it has in connection with other universal service programs,[20] BellSouth's comments in connection with audits related to those programs apply with equal force in the context of E-rate program audits.[21]

IV. MANAGEMENT AND ADMINISTRATION OF THE UNIVERSAL SERVICE PROGRAM

BellSouth offers the following additional suggestions in response to specific Commission inquiries in the *NPRM*.

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[19] *See* BellSouth USAC Audit Resolution Procedures Reply Comments, CC Docket No. 02-06 (Jan. 20, 2005) at 7.

[20] *See NPRM,* ¶ 77.

[21] *See infra* pp. 18-21.

A. Contributor Delinquency (¶ 19). The Commission asks a series of questions related to a carrier's delinquent contributions, including whether to adopt rules to allow USAC to charge interest and assess penalties for a carrier's failure to file the FCC Form 499-A. Section 54.713 of the Commission's rules already permits USAC to bill a contributor a reasonable assessment for failure to file a Telecommunications Reporting Worksheet (*e.g.,* Form 499).[22] According to the USAC website, "499 forms received after the due dates will be considered late, and the filer will be assessed a late filing fee equal to .005 percent of annual revenues. The minimum late filing fee will be $100."[23]

BellSouth supports the application of reasonable penalties or interest for late-filed Form 499s. The imposition of penalties or interest will serve as a deterrent to untimely filings. Regardless of whether the Commission adopts specific rules governing delinquent filings, BellSouth suggests that USAC create a formal process to allow providers a brief grace period for filing a Form 499, upon request (*e.g.,* 5 to 7 calendar days). A short grace period will not hinder USAC's ability to bill providers or disburse support in a timely manner. Moreover, USAC has previously allowed providers an informal five-day grace period for filing Form 499-Qs without incurring any penalties.

B. Performance Measures (¶¶ 24-25). The *NPRM* identifies three types of performance measures: (1) outcome measures;[24] (2) output measures;[25] and (3) efficiency

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[22] 47 C.F.R. § 54.713.

[23] http://www.universalservice.org/serviceprovider/faq/Contribution_and_499_FAQ.asp#How_do_you_1.

[24] Outcome measures "'describe the intended result from carrying out a program or activity.'" *NPRM,* ¶ 25 (citing 2005 PART Guidance at 9, at http://www.whitehouse.gov/omb/part/fy2005/2005_guidance.doc).

measures[26] and asks whether such measures should be used to assess the effectiveness of the universal service programs. BellSouth supports the adoption of performance measures applicable to USAC. Appropriate measurements under an output-based system could include, for example, the number of applications processed, the number of days to process an application, the number of days to process an invoice, and the number of workshops held. Although USAC is not currently held accountable for the delayed review of applications or untimely disbursements of universal service funds to recipients, other stakeholders may be adversely affected by USAC's actions.

Performance measures would serve two purposes. First, they would allow the Commission to assess the performance of USAC through objective criteria. The Commission must be responsible for establishing the specific performance metrics, which must be clearly defined, properly targeted, and easily measurable. USAC should have a clear understanding of how its performance will be measured so that it can perform to that goal. Second, performance measures would provide incentive to USAC to operate more effectively and efficiently. The Commission should not only require USAC to report on its performance annually but also revisit the performance measures on a periodic basis and adjust them as necessary.

C. High Cost Loop Support (¶ 48). The *NPRM* asks whether the Commission should modify the timing and content of the reporting requirements imposed on carriers serving

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[25] Output measures describe "the level of activity, such as applications processed, number of housing units repaired, or number of stakeholders served by a program." *NPRM,* ¶ 25 (citing 2005 PART Guidance at 10).

[26] Efficiency measures "capture a program's ability to perform its function and achieve its intended results relative to the resources expended." *NPRM*, ¶ 25. "Meaningful efficiency measures consider the benefit to the customer and serve as indicators of how well the program performs." *NPRM*, n.64, (citing 2005 PART Guidance at 10).

high-cost areas for the purpose of administering the high-cost loop support mechanism. Due to changes in the high-cost loop support mechanisms over the last few years, BellSouth recommends that the Commission review all related current reporting requirements and eliminate those that are no longer necessary. For example, as a LEC, BellSouth is required to submit certain investment and expense data to the National Exchange Carrier Association ("NECA") on July 31 of each year for participation in the high-cost loop support mechanism.[27] The data are used by NECA to calculate the national average cost per loop. This national average cost per loop is no longer used in the determination of high cost support currently being received by either rural or non-rural carriers. For rural carriers, in 2001, the Commission froze the national average loop cost at $240.[28] For non-rural carriers, such as BellSouth, high cost support is based on forward-looking economic costs as determined by the Commission's cost model pursuant to Section 54.309 of the Commission's rules.

BellSouth therefore urges the Commission to relieve carriers of the obligation to report certain investment and expense data to NECA. Elimination of this reporting requirement would relieve carriers and NECA of the burden and expense of compiling, collecting, and storing data that is not used for any purpose today.

D. Forms (¶ 52). The Commission need not adopt any new forms or revised language in existing forms regarding carrier compliance with certification requirements. The existing language is sufficient to help ensure that funds are used for their intended purposes. Moreover, providers or other entities that misuse universal service funds or fail to comply with the Commission's universal service rules are subject to enforcement action, fines, and penalties.

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[27] 47 C.F.R. § 36.611.

[28] 47 C.F.R. § 36.622(a).

E. Low-Income (¶ 55). The Commission should ensure that the information requested from carriers in order to receive low-income support is necessary information that carriers can readily capture and report. To meet this objective, the Commission should consider certain modifications to the revised FCC Form 497, the worksheet that carriers must submit to receive reimbursement for the low-income programs. As indicated in Section I., the Commission adopted a revised Form 497 in September 2004. However, due to the inability of carriers to provide the requested data, the effective date for use of the revised form has been delayed twice, most recently until further notice.[29]

BellSouth and other industry members have identified certain problems with the data requested in the revised Form 497. The revised form requires carriers to count the number of Lifeline subscribers with service for a full month as well as Lifeline subscribers with service for only part of the month. Currently, BellSouth's billing systems cannot provide this type of partial-month reporting. To develop this functionality, BellSouth would have to modify its billing systems and develop procedures for capturing such data. Such an effort requires time and money.

Instead of adopting a partial-month reporting requirement and imposing additional costs and burdens on carriers, the Commission should allow carriers to report the total number of low-income subscribers in service at the end of the month and the actual dollar amount of Lifeline support provided to these subscribers. This approach provides USAC with the data necessary to

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[29] *Wireline Competition Bureau Announces Delay of Effective Date For Revised Form 497 Used for Low-Income Universal Service Report Until Further Notice*, WC Docket No. 03-109, *Public Notice*, DA 05-604 (rel. Mar. 4, 2005); *Wireline Competition Bureau Announces Delayed Effective Date For Revised Form 497 Used for Low-Income Universal Service Report*, WC Docket No. 03-109, *Public Notice,* DA 04-3188 (rel. Oct. 4, 2004).

reimburse carriers for support provided to partial-month and whole-month subscribers without requiring carriers to modify their billing systems. Given that there are less costly ways to provide USAC and the Commission with relevant data, the Commission should modify the revised Form 497 to eliminate the partial-month reporting requirement.

The *NPRM* also asks whether the Commission should simplify the low-income application process to require annual or semi-annual reporting instead of quarterly reporting.[30] Although the current requirement is quarterly reporting, the Commission has allowed carriers to report monthly. BellSouth has elected to file its Form 497 on a monthly basis because its systems and procedures provide the Lifeline data necessary to complete the form on a monthly basis, and BellSouth provides Lifeline support to low-income subscribers via credits on their monthly bills. Therefore, BellSouth requests that, regardless of whether the Commission retains the current quarterly reporting requirement for Form 497 or adopts an annual or semi-annual reporting obligation, the Commission expressly state that carriers are allowed to report on a more frequent basis (*e.g.,* monthly) if they so choose.

F. Rural Health Care (¶ 58). BellSouth recommends that USAC establish an electronic or automated administrative process for the rural health care program. The current process is primarily manual and relies on the U.S. mail to notify applicants of funding decisions. This lack of automation requires providers to manually track disbursements to applicants and reimbursements from USAC, which is time-consuming and burdensome. BellSouth therefore suggests that USAC establish electronic notification processes similar to those used for the schools and libraries program. Specifically, USAC should develop systems to support: (1) the

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[30] *NPRM*, ¶ 55.

electronic notification to providers of approved funding commitment decisions; (2) the electronic notification to providers that an award for support has been approved as well as the actual dollar amount of that support.

G. USF Disbursements (¶ 60). The Commission should not establish a single uniform system for disbursing universal service funds. As the Commission recognizes, there are "many differences among the USF programs."[31] Variances in data requirements and the frequency of reporting make a single disbursement mechanism inappropriate. Moreover, retaining separate disbursement mechanisms allows for more effective tracking and monitoring of each individual program.

BellSouth supports the adoption of specific rules governing the true-up process for universal service funds that have been disbursed.[32] First, the Commission should require USAC to provide standard reports to carriers that detail true-up calculations. BellSouth often receives disbursements that differ in amount from the disbursement totals posted by USAC on its website. However, there is never an explanation of the difference. BellSouth therefore must contact USAC directly for additional information. Reports explaining true-up calculations would eliminate confusion and carrier inquiries and would allow USAC to better manage and administer the disbursement process.

Second, BellSouth recommends that the Commission expressly require USAC to meet certain timeliness requirements. The Commission could include these timeliness standards in any performance measures it may adopt in this proceeding. Specifically, the Commission should require USAC: (1) to post actual monthly disbursements no later than five business days before

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[31] *NPRM*, ¶ 60.

[32] *See id.*, ¶ 61.

the end of the month and (2) to send remittance statements electronically on the last day of the month.

The *NPRM* notes that USAC posts on its website the disbursement amounts for high-cost and low-income support five days before disbursement and sends remittance statements to providers on the last day of each month.[33] These deadlines, however, are not consistently met. For example, BellSouth sometimes does not receive remittance statements until the second or third business day of the following month. In addition, as indicated previously, the actual amount disbursed for high-cost support often varies from the projected disbursement amount posted on the website. Discrepancies and untimely disbursement information create inefficiencies in BellSouth's process for journalizing disbursements in the proper accounting period. In order to avoid these problems, the Commission should adopt the timeliness standards described above.

H. Contribution Process (¶ 65). BellSouth supports efforts to streamline the contribution process and proposes that the Commission discontinue quarterly reporting of <u>actual</u> revenues on the Form 499-Q. Reporting actual revenues on a quarterly basis is a burdensome and time-consuming effort that provides no benefit and serves no purpose. USAC does not use this quarterly data for billing or disbursement purposes. Moreover, actual revenues are available in the annual true-up filing (Form 499-A); and carriers would still report projected revenues on the Form 499-Q, which USAC uses to determine the contribution factor for the upcoming quarter and the assessment base for monthly contributions. Notwithstanding the fact that this quarterly revenue data is not used by USAC for billing or disbursement purposes, compiling this data

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[33] *NPRM*, ¶¶ 61-62.

requires BellSouth to devote nearly the same amount of time and resources that it uses to compile actual revenue data for the annual Form 499-A. In light of the above, the Commission should eliminate the requirement to report actual revenue data on a quarterly basis.

I. Rural Health Care, Low Income, and High-Cost Beneficiary Audits (¶ 76).

BellSouth recognizes that audits play an important role in ensuring compliance with the Commission's universal service rules and protecting the integrity of the federal universal service program. At the same time, audits should be designed in such a way as to provide the Commission and USAC with relevant data without overburdening those entities subject to audits. BellSouth believes that the recommendations set forth below achieve this balance.

In 2004, USAC audited BellSouth as a beneficiary of high-cost support in the state of Alabama. USAC required BellSouth to provide reports that listed each individual customer line in every wire center in Alabama. Specifically, USAC required BellSouth to provide customer name; billing address; alternative address; subscription start date; disconnect date; line status (*e.g.,* active, disconnected); telephone number; subscription identification; and type of line (*e.g.,* residential, single-line business, multi-line business) for nearly four million lines. Eight employees were integrally involved in producing the line and customer data requested over nearly a three-month period. BellSouth estimates that approximately 650 personnel hours were devoted to responding to the audit request. Moreover, the database queries required to compile this information ran for hours, and the resulting data files were massive. In some instances, it took more than 15 minutes to open a single file on a personal computer.

The time expended in capturing the requested line and customer information could have been substantially reduced if a sample had been requested instead of a 100% verification of all lines. Such an approach would have provided adequate assurance of compliance with far fewer burdens and costs imposed upon both USAC and BellSouth.

Although USAC did not use sampling in the high-cost audit described above, it did use this approach when it audited BellSouth as the beneficiary of low-income support. In the low-income audit, USAC used a sample of 100 accounts. This sampling provided USAC with adequate data and information to conduct its audit in substantially less time and with fewer resources.

In light of the foregoing, BellSouth suggests that the Commission adopt clear audit guidelines that include appropriate scope limitations on audit requests. First, the Commission should designate sampling as an acceptable audit method. Sampling is a reliable and common audit method that not only provides the auditor with relevant data necessary to perform and complete an audit within a reasonable timeframe, but also minimizes the costs and burdens imposed upon the entity subject to the audit as well as USAC. Second, the Commission's audit rules should limit beneficiary audits to as few as possible, but certainly no more than one per year per universal service program. Audits, while necessary, impose significant costs and burdens upon the entities involved in the audit, and the costs associated with multiple or repetitious audits outweigh the benefits. Third, the Commission should require an auditor to furnish the final report to audited entities within a reasonable timeframe (*e.g.,* no more than 60 days) after conclusion of the audit. The value of an audit and its findings are diminished as time progresses. Moreover, if there are compliance issues, a delinquent audit report can delay the resolution of these issues.

Fourth, BellSouth proposes that the Commission limit audits to compliance with Commission rules instead of unpublished USAC procedures and policies.[34] The primary purpose of such audits is to ascertain compliance with *established* program rules and standards. Testing for compliance with unpublished (and ever-evolving) USAC procedures and policies therefore is inappropriate. In addition, some of USAC's policies and practices are informal or serve only as guidelines; as a result, they are not legally biding, and some entities may follow these procedures, while others may not. There also have been instances in which USAC has not adhered strictly to its own informal procedures. For example, although USAC procedures call for carriers that submit late Form 499s to incur a financial penalty,[35] USAC previously allowed providers an informal five-day grace period for filing Form 499-Qs. This grace period, however, was not expressly included in any USAC procedures. Therefore, it is unclear whether all contributors were even aware of this unwritten policy.

Moreover, unlike the rulemaking proceedings before the Commission, there is no formal process for providing input to USAC prior to changes in its internal practices and policies. Therefore, stakeholders do not get the opportunity to explain how certain policies or processes may affect their businesses or whether they can even comply with certain procedures. Given the possible inconsistencies with following USAC's unpublished procedures and the current inability of stakeholders to effect changes in such procedures, audits should not include compliance with USAC's unpublished procedures and policies.

J. Contributor Audits (¶ 80). BellSouth opposes requiring separate independent audits of entities that contribute to the universal service fund in addition to audits performed by

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[34] *See NPRM*, ¶ 76.

[35] *See supra* text p. 11.

the Commission or USAC. Major contributors, including BellSouth, are already subject to multiple audits, including independent financial audits, quarterly reviews of the Company's financial statements, and Section 272 biennial audits. In fact, BellSouth incurred audit-related fees of approximately $8 million in 2004 for these professional services. All of these audits, combined with periodic audits by the Commission or USAC, are sufficient to provide reasonable assurances of compliance with the Commission's universal service requirements.

In addition, as a general rule, audits should be contracted for and paid for by USAC, not the individual entities subject to the audit. Audit expenses incurred by USAC are part of the costs of managing and administering the federal universal service program. Accordingly, it is appropriate to include this expense in the administrative costs of universal service and spread the costs among all contributors. This approach also ensures that no single contributor or class of providers is overburdened by excessive audit expenses. However, an exception might be where an audit reveals fraud or misconduct by the audited entity. In this case, it would be appropriate to require the audited entity (whether a contributor or fund recipient) to pay for the audit, instead of USAC.

BellSouth opposes the creation of a threshold for triggering a contributor audit (*e.g.*, carriers contributing $100 million or more in a fiscal year are subject to an audit). Such a requirement would disproportionately burden large carriers such as BellSouth. Every contributor should be subject to periodic audits. Moreover, threshold contribution audit triggers will reduce the incentive of carriers below those triggers to comply with the Commission's universal service rules. The Commission therefore should not excuse certain carriers from audits based on an arbitrary threshold.

K. Document Retention (¶ 84). BellSouth supports the adoption of record retention requirements for all universal service mechanisms. While it is appropriate to require the retention of a baseline of information in order to establish a verifiable audit trail, the timeframe for such retention must be reasonable in light of the individual universal service program. Accordingly, the Commission should not establish a uniform five-year retention period for all four of the programs.

Instead of a one-size-fits-all approach, the Commission must consider the various types of information that entities must retain under the four programs. For example, the low-income support mechanism requires carriers to keep sensitive customer information such as income tax returns, paycheck stubs, etc.[36] for an extended period of time.[37] In this era of heightened customer privacy expectations, there is an obvious tension between the documentation carriers must retain for compliance purposes under the low-income programs and customer concerns about the protection of their personal information. Given the sensitive nature of this information, a five-year record retention requirement for the low-income program may be inappropriate. The longer sensitive customer data is retained, the greater the chances of a possible breach.

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[36] "Acceptable documentation of income eligibility includes the prior year's state, federal, or tribal tax return, current income statement from an employer or paycheck stub, a Social Security statement of benefits, a Veteran's Administration statement of benefits, a retirement/pension statement of benefits, an Unemployment/Worker's Compensation statement of benefits, federal or tribal notice letter of participation in General Assistance, a divorce decree, child support, or other official document." 47 C.F.R. § 54.410(a)(2).

[37] The Commission's rules require eligible telecommunications carriers to "maintain records to document compliance with all Commission and state requirements governing the Lifeline/Link Up programs for the three full preceding calendar years and provide that documentation to the Commission or Administrator upon request. Notwithstanding the preceding sentence, eligible telecommunications carriers must maintain the documentation required in §§ 54.409(d) and 54.410(b)(3) for as long as the consumer receives Lifeline service from that eligible telecommunications carrier or until audited by the Administrator." 47 C.F.R. § 54.417(a).

Moreover, there are costs associated with storing records. The detailed customer information that USAC requested in its 2004 high-cost audit of BellSouth[38] (described in Section III.J) is so voluminous that BellSouth retains the detailed mechanized records for only two years. Keeping this data for a longer period would substantially increase the costs of storage. In addition, while BellSouth retains the higher level line count information that it uses to generate the high-cost line count filings submitted quarterly to USAC for five years, it only retains the individual mechanized customer records for two years.

Thus, while a five-year document retention period for the schools and libraries program may be reasonable because of the complex competitive bidding process, a shorter retention period may be more appropriate for the low-income, high-cost, and rural health care programs. Any documentation retention requirement must balance the need for such documentation against the storage capacity and expense associated with maintaining these records.

Respectfully submitted,

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October 18, 2005

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[38] *See supra* text pp. 18-19.

CERTIFICATE OF SERVICE

I do certify that I have this 18th day of October 2005 served a copy of the foregoing **BELLSOUTH OPPOSITION** by electronic filing and/or by placing a copy of the sam in the United States Mail, addressed to the parties listed below.

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